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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 THE UNITED STATES OF AMERICA,
12
13 vs. Plaintiff,
14 DAVID MEDNANSKY, MARTINE
15 MEDNANSKY, individually,
16 Defendant.

CASE NO. 10cv1307-LAB (BGS)
**ORDER DENYING MOTION FOR
RECONSIDERATION**

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18 On April 10, Plaintiffs submitted a motion to dismiss pursuant to Fed. R. Civ. P.
19 12(b)(4) and (5). By discrepancy order issued April 16, the Court accepted this motion for
20 filing *nunc pro tunc* as an *ex parte* motion for reconsideration of the Court's earlier orders.

21 The motion claims that Jennifer Hegemier, Esq., the Mednanskys' attorney who also
22 represented them in the related case 09cv1478-LAB (BGS), *Mednansky v. Metz*, was not
23 authorized to accept service of process, that the Mednanskys were not served in some other
24 way, and therefore the Court lacks personal jurisdiction over them.

25 On April 22, 2010, Ms. Hegemier was duly substituted in place of the Mednanskys
26 (who had been proceeding *pro se*) in case 09cv1478, and the Mednanskys' signatures
27 appear on the substitution form. Two months later, she accepted service on their behalf in
28 this case, which was related to the earlier action. Her declaration in support of the

1 acknowledgement of service in this case is filed in the docket in support of the return of
2 service in this case. (See Docket no. 4 at 1.)

3 The current motion concedes that Ms. Hegemier was representing the Mednanskys
4 in the related matter but claims she was not authorized to represent them in this matter or
5 accept service for them. Specifically, they allege:

6 Hegemier had no legal authority to accept process on defendants['] behalf,
7 the defendants had never given Hegemier authority to accept summons and
8 complaint, Hegemier never asked permission to accept this service, Hegemier
9 was not defendants' attorney in this action or proceeding or when she
10 accepted service, [and] defendants have no contract with Hegemier for
11 representation in this case

12 Motion at 3:2–9.

13 The record shows, however, that both Defendants were well aware that this action
14 was pending and that Ms. Hegemier was representing them in it, and that they consented
15 to this representation. For example, each of the Mednanskys signed a declaration under
16 penalty of perjury in support of their opposition to Plaintiff's motion for partial summary
17 judgment. (Docket nos. 35-2 at 1–4 (Declaration of David Mednansky, dated November 12,
18 2010), 35-3, 1–6 (Declaration of Martine Mednansky, dated November 12, 2010).) The
19 declarations are both headed by this case's caption, giving the parties and case number, and
20 both declarations list Ms. Hegemier as their counsel of record. The Mednanskys gave the
21 declarations to Ms. Hegemier, who filed them on their behalf.

22 The Mednanskys' complaints about Ms. Hegemier's representation of them do not
23 warrant reversing any rulings. Even if an attorney fails to act competently or in her clients'
24 interest, they are still bound by her acts. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633–34
(1962).

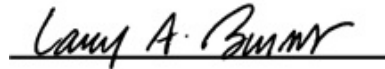
25 That said, there is no evidence Ms. Hegemier incompetently represented the
26 Mednanskys, or that she was responsible for the adverse rulings against them. She raised
27 the arguments they had already raised in two previous cases, but did so in better form,
28 adding supporting authority and other, better arguments. When she substituted in, in the
second of three related actions, a number of rulings adverse to the Mednanskys had already

1 been made.(See Docket no. 30 at 12:25–13:5 (pointing out that most issues had already
2 been litigated), 12:16–17 (adopting reasoning of earlier rulings); 18:9 (noting earlier ruling),
3 20:6–9 (noting the Mednanskys' position in earlier litigation).) Ms. Hegemier was not
4 responsible for the law of the case when she substituted in and began trying to assist them.
5 And although they now claim she lost their appeal, there is no indication any appeal would
6 have succeeded. For example, the Ninth Circuit summarily affirmed this Court's dismissal
7 of the complaint in *Mednansky v. Gillett*, 07cv1425, finding it to be frivolous. Later, on August
8 9, 2011, the Ninth Circuit, citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), denied the
9 Mednanskys' motion for a stay pending appeal of this Court's order evicting them and
10 authorizing the demolition of their cabin.

11 In short, the Mednanskys' motion is baseless. In three lawsuits they have defended
12 on the merits. There is no basis for reconsidering or revisiting earlier decisions. The motion
13 is **DENIED**.

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15 **IT IS SO ORDERED.**

16 DATED: April 19, 2012

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18 **HONORABLE LARRY ALAN BURNS**
19 United States District Judge
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